IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.1944 of 2004

Shri Nitin Dattatraya Jagtap ..Petitioner

Versus

1.The Municipal Corporation of the
City of Pune.
2.The Commissioner, Pune Municipal
Coropration.
3. The State Election Commission...Respondents

Mr. Nitin P.Deshpande, for the Petitioner

Mr. R.G. Ketkar, for the Respondent No.1.

Mr. Shantaram with Shri R.V. More, for the Respondent No.3.

CORAM : F.I. REBELLO & S.P. KUKDAY,JJ.
DATED : 4th February, 2005

ORAL JUDGMENT: (PER F.I. REBELLO, J.)

. Rule. Heard forthwith. The petitioner was elected as Councillor of Respondent No.1 at the elections held in February, 2002. The term of office is for the period from 1997 to 2002. It is his case that as Councillor he was taking various steps for the benefits of citizens and for a transparent administration. It is the case of the petitioner that he published a pamphlet-cum-letter dated 5th January, 2004 addressed to S.B. Patil, Additional Commissioner(General) of the P.M.C.asking to take note of the public agitation which he intended to launch. It was his contention that in respect of a building permission granted on Survey No.123 of Kothrud, Pune although only 78 huts were erected on the plot of land, whereas 210 persons were approved. In the said letter he declared his intention to resign by way of protest. One of these

pamphlet-cum-letter was handed over to Shri S.V. Patil, who was the Additional Commissioner (General). That letter apparently was forwarded to the Commissioner of Pune Municipal Corporation, who passed an order dated 6th January, 2004 that he had accepted the resignation and accordingly put up his endorsement and held that the post has become vacant with effect from 5th January, 2004.

. It is his case that the Commissioner has also wrongly stated that the letter was personally handed over to him. It is his contention that the said pamphlet-cum-letter could not be construed as a letter of resignation considering section 7 of the Bombay Provincial Municipal Corporation Act, 1949 and accordingly he has sought various reliefs including the withdrawal/revocation of the order dated 6th January, 2004.

2. A reply has been filed on behalf of the Respondent No.1. It is set out that the letter was personally handed over by the petitioner to him on 5th January, 2004. That letter was forwarded by the Additional Municipal Commissioner to the Senior Legal Adviser, who on consideration of the provisions of section 7 of the Act submitted a note which was approved by the Additional Municipal Commissioner and thereafter approved by the Commissioner. It is, therefore, submitted that the resignation was properly accepted and that the petitioner ceased to hold office as a Counsellor.

3. Section 7 reads as under:-

"Any councillor may resign his office at any time by notice in writing to the Commissioner and, on such notice being given, his office shall become vacant as from the date of the notice".

From the language of the Section it is clear that the notice of resignation must be given in writing to the Commissioner. On such a notice being given the seat becomes vacant. In other words there is no requirement of the Commissioner accepting the resignation. The construction sought to be given on behalf of the respondents is is that the letter of resignation need not be addressed to the Municipal Commissioner as long as the letter is handed over to the Municipal Commissioner. We are afraid that it is not possible to accept such an interpretation. On behalf of the Respondents learned Counsel sought to rely upon the the language of Article 190 of the Constitution of India, which provides in what situations a seat becomes vacant in the House of Legislature. One of the situations where the vacancy arises is when the Member resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman. It will not be possible for the purpose of interpreting Section 7, to rely on Article 190 of the Constitution of India as the language of Article 190 is couched differently. It requires acceptance by the Chairman or the Speaker. In the instant case the effect is immediate and requires no acceptance. In such circumstances considering the consequences of the leter

addressed to the Commissioner, Section will have to be considered strictly in terms of the language of the Section. If so read, what is required is that the letter of resignation must be addressed in writing to the Commissioner. The Commissioner cannot act on a letter addressed to some other person nor is there any provision for the Commissioner to accept the letter if such letter was addressed to some other person and is personally handed over to him.

4. In the instant case the purported letter of resignation and we have our doubts considering the language of the letter, whether it amounts to letter of resignation at all, was not addressed to the Municipal Commissioner as required by Section 7 of the Act. As such there was no compliance with the requirement of Section 7. Once that be the case there was no vacancy in the office and consequently the order of respondent NO.2 declaring the vacancy to our mind is patently without jurisdiction.

5. In the light of that the order dated 6th January, 2004 bearing No.MCO/386 issued by the Respondent NO.2 is set aside. The Respondents are directed to permit the petitioner to function as the elected Councillor for the term for which he is elected without any interference. Rule made absolute accordingly. No order as to costs.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)